Supreme Court, U.S.
FILED
MAY 30 1997
CLERK

No. 96-1744

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

BLANCA GONZALEZ and MIGUEL MORENO,
Petitioners,

v.

PEOPLE OF THE STATE OF CALIFORNIA, ex rel.,
JOAN R. GALLO, City Attorney of the City of San Jose,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of California

---

BRIEF OF RESPONDENT IN OPPOSITION

JOAN R. GALLO
(Counsel of Record)
GEORGE RIOS
GLENN D. SCHWARZBACH
151 West Mission Street
San Jose, California 95110
(408) 277-4454
Attorneys for Respondent

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED

The three (3) questions presented by Petitioners are misleading in that they fail to specify that the prohibitions contained in the preliminary injunction issued to abate the public nuisance caused by the VSL/VST criminal street gangs apply only within the confines of a four (4) block neighborhood known as Rocksprings.

PARTIES

Blanca Gonzalez and Miguel Moreno are the only two (2) of the original eleven (11) appellants who challenged the preliminary injunction to join in the Petition for a Writ of Certiorari.

Petitioners incorrectly identify the Respondent as Joan R. Gallo, City Attorney of San Jose, California. The correct Respondent is the People of the State of California, ex rel. Joan R. Gallo, City Attorney of San Jose, California.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES	ii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	1
A. Proceedings To Abate The Public Nuisance	1
B. Correcting Misrepresentations Of The Record	4
REASONS FOR DENYING THE WRIT	6
I. PARAGRAPH (a) IS CONSISTENT WITH *MADSEN*	7
II. NEITHER PARAGRAPHS (a) NOR (k) ARE VAGUE	10
A. Paragraph (a) Gives Adequate Notice	11
B. Paragraph (k) Gives Adequate Notice	13
III. AN INJUNCTION CAN BIND THE MEMBERS OF AN ORGANIZATION CAUSING A PUBLIC NUISANCE	14
CONCLUSION	17

TABLE OF AUTHORITIES

Cases	Page
Allred v. Shawley, 232 Cal.App.3d 1489 (1991)	14
American Communications Asso. v. Douds, 339 U.S. 382 (1950)	11
Berger v. Superior Court, 75 Cal. 719 (1917)	14
Coates v. City of Cincinnati, 402 U.S. 611 (1971)	9, 13
Healy v. James, 408 U.S. 169 (1972)	16
In re Lennon, 66 U.S. 548 (1897)	14
Kolender v. Lawson, 461 U.S. 352 (1983)	12
Madsen v. Women's Health Center, Inc., 512 U.S. 753 (1994)	*passim*
Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U.S. 287 (1941)	15
Mitchell v. Prunty, 07 F.3d 1337 (9th Cir. 1997), *amended on denial of rehearing* —— F.3d ——	16
NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982)	16
Papachristou v. City of Jacksonville, 405 U.S. 156 (1972)	9
Re Debs, 158 U.S. 564 (1894)	6
Regal Knitwear Co. v. National Labor Relations Board, 324 U.S. 9 (1944)	14
Roth v. United States, 354 U.S. 476 (1957)	11
Scales v. United States, 367 U.S. 203 (1961)	16
Schenk v. Pro-Choice Network, 519 U.S. —— [117 S.Ct. 855] (1997)	*passim*
Shuttlesworth v. City of Birmingham, 382 U.S. 87 (1965)	9
United Steel Workers v. United States, 361 U.S. 44 (1959)	6
University of Texas v. Camenisch, 451 U.S. 390 (1981)	5
Waters v. Berry, 711 F.Supp. 1125 (D.D.C. 1989)	9

Statutes

California Code of Civil Procedure § 527.6	14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

No. 96-1744

BLANCA GONZALEZ and MIGUEL MORENO,
Petitioners,

v.

PEOPLE OF THE STATE OF CALIFORNIA, ex rel.,
JOAN R. GALLO, City Attorney of the City of San Jose,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of California

---

BRIEF OF RESPONDENT IN OPPOSITION

This case simply involves the use of an injunction to abate a public nuisance in a manner that is completely consistent with constitutional principles.

STATEMENT OF THE CASE

A. Proceedings To Abate The Public Nuisance.

On February 26, 1993, the Respondent filed this civil action in superior court seeking an injunction to abate the public nuisance caused by the VSL/VST criminal street gangs within a four (4)-block neighborhood known as Rocksprings. The public nuisance created by the VSL/VST criminal street gang members within Rocksprings is succinctly described in the opinion of the California Supreme Court as follows:

> The four-square-block neighborhood, claimed as the turf of a gang variously known as Varrio Sureno Town, Varrio Sureno Treces (VST), or Varrio Sureno Locos (VSL), is an occupied territory. Gang members, all of whom live elsewhere, congregate on lawns, on sidewalks and in front of apartment complexes at all hours of the day and night. They display a casual contempt for notions of law, order, and decency—openly drinking, smoking dope, sniffing toluene, and even snorting cocaine laid out in neat lines on the hoods of residents' cars. The people who live in Rocksprings are subjected to loud talk, loud music, vulgarity, profanity, brutality, fistfights and the sound of gunfire echoing in the streets. Gang members take over sidewalks, driveways, carports, apartment parking areas, and impede traffic on the public thoroughfares to conduct their drive-up drug bazaar. Murder, attempted murder, drive-by shootings, assault and battery, vandalism, arson, and theft are commonplace. The community has become a staging area for gang-related violence and a dumping ground for the weapons and instrumentalities of crime once the deed is done. Area residents have had their garages used as urinals; their homes commandeered as escape routes; their walls, fences, garage doors, sidewalks, and even their vehicles turned into a sullen canvas of gang graffiti.
>
> The people of this community are prisoners in their own homes. Violence and the threat of violence are constant. Residents remain indoors, especially at night. They do not allow their children to play outside. Strangers wearing the wrong color clothing are at risk. Relatives and friends refuse to visit. The laundry rooms, the trash dumpsters, the residents' vehicles, and their parking spaces are used to deal and stash drugs. Verbal harassment, physical intimidation, threats of retaliation, and retaliation are the likely fate of anyone who complains of the gang's illegal activities or tells police where drugs may be hidden.

(Petitioners' App. 1-2; *also see,* Petitioners' App. 34-35.)

The characteristics of Rocksprings made the neighborhood attractive for the VSL/VST criminal street gang members, who had lived and worked elsewhere, to claim it as their turf. It is isolated from other residential neighborhoods—having only two (2) streets for ingress and egress—and consists primarily of low income apartment buildings. (*See*, State Court App. 51, 82, 686-689.) This, along with the protective shield provided by the VSL/VST criminal street gangs, enabled these gangs to flourish in Rocksprings despite intense police enforcement efforts. (*See*, State Court App. 33, 45-46, 58, 63, 593-594, 608, 620, 686, 689-690, 699.)

To abate the public nuisance caused by the VSL/VST criminal street gangs in Rocksprings, the superior court ultimately issued a preliminary injunction against eleven (11) specifically named gang members, including Petitioners. (Petitioners' App. 3). The preliminary injunction contains twenty-four (24) provisions. Although Petitioners suggest otherwise, **the preliminary injunction regulates conduct only within the (4) blocks referred to as Rocksprings.**

The eleven (11) gang members appealled the issuance of the preliminary injunction on numerous grounds to the court of appeal. The court of appeal upheld nine (9) provisions of the preliminary injunction and struck the remaining provisions, including paragraphs (a) and (k), the provisions now being challenged by Petitioners. (Petitioners' App. 91-93.) It also dismissed Petitioner Blanca Gonzalez. (Petitioners' App. 112-113.) The opinion of the California Supreme Court accurately describes the basis of the decision of the court of appeal. (Petitioners' App. 4.) In the interests of brevity, Respondent respectfully refers this Court to that discussion.

Respondent filed a petition for review with the California Supreme Court, seeking review only of provisions (a) and (k) of the preliminary injunction and the dismissal of

Petitioner Blanca Gonzalez. The California Supreme Court granted review of these issues, and its decision, with regard to the provisions of the preliminary injunction, is limited to paragraphs (a) and (k). (Petitioners' App. 4, 44.) The merits of the other twenty-two (22) provisions of the preliminary injunction were not at issue before the California Supreme Court. Thus, Petitioners' implication of the start of their petition that the decision of the California Supreme Court upheld all twenty-four (24) provisions of the preliminary injunction is simply wrong. (See, Petition, p. 3.)

B. Correcting Misrepresentations Of The Record.

Petitioners badly misrepresent the record by asserting that the "core" evidence forming the basis of Respondent's abatement action is the declaration of a single police officer. (Petition, pp. 5-6.) As the California Supreme Court correctly noted in its opinion, Respondent filed a total of forty-eight (48) declarations in support of its abatement action. (Petitioners' App. 1; *also see,* State Court App. 28-33, 39-88, 558-795.) Approximately forty-one (41) of the declarations were by City of San Jose police officers, most of whom had extensive training regarding gang issues and were personally familiar with Rocksprings because they were currently working in that neighborhood or had previously been assigned to it. (*Ibid.*) The remaining seven (7) declarations, which were filed under seal, were by residents of Rocksprings.

Petitioners also misrepresent the record by asserting that an individual would be identified as a VSL/VST criminal street gang member if he/she was observed by a police officer on just one (1) occasion wearing clothing indicative of such gang membership. (Petition, pp. 6-7.) Petitioners have not, and can not, identify one (1) individual named as a defendant in this case who the superior court determined to be a VSL/VST criminal street gang member based solely upon style of dress, let alone style of dress

on one (1) occasion. Respondent established gang membership at this preliminary stage in the proceedings [1] by submitting evidence of multiple indica of gang membership. This evidence included admissions, tattoos, gang style of dress, whether individuals were associating with other admitted gang members, photos, knowledge of gang hand signs, location of the contact with police, and whether other individuals had identified the defendant as a gang member. (*See,* State Court App. 558-789.)

The evidence that Petitioners are VSL/VST criminal street gang members involved much more than dress. The evidence against Petitioner Blanca Gonzalez includes the fact that on two (2) separate occasions, within ten (10) months of the date upon which Respondent filed this legal action, she admitted gang membership to two (2) different police officers. (State Court App. 635-642, 757-779.) One (1) of these admissions occurred while she was "hanging out" in Rocksprings. (State Court App. 757-779.) On both occasions, the admissions were supported by the fact that she was with others who also admitted gang membership [2]; she, along with the persons she was with, were dressed in a manner consistent with membership in the VSL/VST criminal street gangs; and she was in areas frequented by these gangs. (State Court App. 635-642, 757-779.)

---

[1] Importantly, Petitioners are challenging a preliminary injunction, which is customarily granted on the basis of procedures that are less formal and evidence that is less complete than a trial on the merits . (*See, University of Texas v. Camenisch,* 451 U.S. 390, 395-396 (1981).) Accordingly, the determination made by the superior court with regard to membership merely reflects its conclusion, based upon the record before it at the time of its ruling, that Respondent is likely to prevail on the merits at trial. It is not a final adjudication of the merits. (*See, ibid.*)

[2] Petitioners fail to quote the portion of the Declaration of Police Officer Michael Lloyd indicating that the individuals Petitioner Blanca Gonzalez was with also admitted gang membership. (*See,* Petition, p. 8; *also see,* State Court App. 635-642.)

Similarly, the evidence against Petitioner Miguel Moreno also includes admission of gang membership to a police officer within six (6) months of the time this lawsuit was filed. (State Court App. 757-779.) Petitioner Miguel Moreno made this admission while loitering in Rocksprings, where he did not live and which, as already discussed, was the "turf" of the VSL/VST criminal street gangs. (*Ibid.*) Further indicia of gang membership is the fact that he was observed in Rocksprings selling illegal drugs—one of the primary activities engaged in by VSL/VST criminal street gang members in Rocksprings. (State Court App. 754-756.)

REASONS FOR DENYING THE WRIT

It is beyond question that the courts have the authority to issue injunctions to abate public nuisances. (*See, e.g., United Steel Workers v. United States*, 361 U.S. 44, 60-61 (1959), *Re Debs*, 158 U.S. 564, 587 (1884).) Moreover, this Court has repeatedly recognized in a variety of contexts the strong government interest in ensuring public safety and order, promoting the free flow of traffic on public streets and sidewalks, protecting the property rights of citizens and protecting residential privacy. (*See, Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 767-768 (1994).) And, Petitioners can not establish a conflict between this case and any other case, for no court has held that public nuisance abatement actions can not be used to abate a public nuisance caused by street gangs in a neighborhood that they have taken over as their turf.

What Petitioners are thus left to argue is that this Court should review the constitutionality of two (2) provisions of the preliminary injunction and that neither of these provisions should be binding upon them. However, the California Supreme Court resolved these issues based upon firmly established constitutional principles, including those set forth by this Court in *Madsen, supra,* 512 U.S. 753, and *Schenk v. Pro-Choice Network,* 519 U.S.—— [117

S. Ct. 855] (1997). Further review is therefore unwarranted.

I. PARAGRAPH (a) IS CONSISTENT WITH *MADSEN*.

Petitioners' attack on paragraph (a) as a "ban on public association in Rocksprings" greatly overstates the reach of this provision. (*See*, Petition, p. 19.) Paragraph (a) is extremely narrow in that it only prohibits the specifically named gang members from congregating in *public* within Rocksprings with other gang members. It does not prevent the named gang members from freely entering and leaving the neighborhood. The named gang members are free to walk the streets and sidewalks of Rocksprings alone or with other non-VSL/VST criminal street gang members. They are free to meet with others, including other VSL/VST criminal street gang members, in homes or apartments within Rocksprings or any place outside of Rocksprings. Thus, despite Petitioners' suggestion to the contrary, paragraph (a) does not at all restrict the ability of Miguel Moreno to meet with his girlfriend, baby and cousin, even if they, in fact, live in Rocksprings. (*See*, Petition, p. 19.) As the California Supreme Court correctly concluded, the purpose of paragraph (a) is simply and clearly:

> . . . to ensure that, within the circumscribed area of Rocksprings, gang members have no opportunity to combine. . . . [¶] . . . It is the threat of *collective* conduct by gang members loitering in a specific and narrowly described neighborhood that the provision is sensibly intended to forestall.

(Italics in original.) (Petitioners' App. 35-36.)

Despite the narrow reach of paragraph (a), Petitioners contend that this provision is invalid because "[u]nder standards set forth in *Madsen* this ban on public association in Rocksprings is more than 'necessary to serve a significant governmental interest.' " (Petition, p. 19, *quoting*

Madsen, supra, 512 U.S. at 765). Assuming for the sake of argument that this is the applicable standard,[3] paragraph (a) is valid because it is no broader than necessary to serve the significant government interest of abating the public nuisance caused by the VSL/VST criminal street gangs in Rocksprings. (Petitioners' App. 33-38.)

Prophylactic measures, such as paragraph (a), are common in injunctions issued to deal with nuisances. For example, this Court recently upheld just such a measure in *Schenk, supra,* 519 U.S. —— [117 S. Ct. 855]. In *Schenk*, this Court upheld a provision of an injunction creating a "fixed buffer zone" in order to ensure that abortion protesters did not prevent access to the subject clinic. (519 U.S. at —— [117 S. Ct. at 866].) The protestors challenged the provision, arguing the other provisions of the injunction that were not challenged, such as those prohibiting trespassing, excessive noise and "blocking, impeding or obstructing access," were sufficient to ensure access. (519 U.S. at —— [117 S. Ct. at 869].) They asserted that the "fixed buffer zone," therefore, simply acted to ban peaceful, nonobstructive demonstrations on public sidewalks and rights of way. (*Ibid.*) This Court rejected the protestors' argument, holding that the fixed buffer zone was an appropriate "prophylactic measure" in light of the record. (*Ibid.*)

---

[3] In *Madsen*, this Court held that in evaluating an injunction restricting First Amendment speech, the injunction could "burden no more speech than necessary to serve a significant interest." (512 U.S. at 765-766.) Petitioners' reference to this portion of *Madsen* simply ignores the fact that this test is only applicable to injunctions burdening speech. As the California Supreme Court correctly concluded, the evidence in this case does not demonstrate that the VSL/VST criminal street gangs were engaged in any Constitutionally protected expressive or speech-related activities within Rocksprings. (Petitioners' App. 36.) Thus, application of this test to paragraph (a) applies a stricter standard than necessary. Nevertheless, as discussed above, paragraph (a) clearly meets this more stringent standard.

Petitioners' contention that paragraph (a) improperly inhibits a gang member's "right to use the sidewalks and streets as protestors . . ." suffers several flaws. (*See, Petition*, p. 19.) As discussed above, paragraph (a) does not completely prohibit the use of sidewalks and streets in Rocksprings by named gang members. Moreover, nothing in the record establishes that the VSL/VST gang members were using the streets and sidewalks within Rocksprings "as protestors." To the contrary, as the California Supreme Court correctly concluded:

> To judge from the evidence placed before the superior court, the gangs appear to have had no constitutionally protected or even lawful goals within the limited territory of Rocksprings. So far as the record before the trial court shows, the gangs and their members engaged in no expressive or speech-related activities which were not either criminally or civilly unlawful or inextricably intertwined with unlawful conduct.

(Petitioners' App. 36.)

Furthermore, this Court has upheld provisions of injunctions that limit the right to use sidewalks and streets even in the protest context. (*See, e.g., Madsen, supra*, 512 U.S. 753 [upholding fixed buffer zone that prevented protesters from entering any portion of the public right-of-way within 36 feet of the property line of the clinic], *Schenk, supra*, 519 U.S. at —— [117 S. Ct. 868-869] [upholding fixed buffer zone that included public sidewalks and rights of way].)

The cases cited by Petitioners are inapposite. None of the cases hold that an injunction issued to abate a nuisance can not contain provisions restricting the use of public streets and sidewalks. (*See, e.g., Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972) [striking an anti-vagrancy statute on vagueness grounds], *Coates v. City of Cincinnati*, 402 U.S. 611 (1971) [striking an ordinance prohibiting three (3) or more persons from

gathering on sidewalks and conducting themselves in a manner annoying to others], *Shuttlesworth v. City of Birmingham*, 382 U.S. 87 (1965) [striking a statute that could be interpreted to criminalize the mere refusal to move from a sidewalk after being requested to do so by a police officer], *Waters v. Berry*, 711 F. Supp. 1125 (D.D.C. 1989) [upholding a challenge to a juvenile curfew ordinance].) Unlike these cases, paragraph (a) is an appropriate "prophylactic measure" based on the record in this case and is consistent with the constitutional principles announced in *Madsen* and *Schenk*.[4]

II. NEITHER PARAGRAPHS (a) NOR (k) ARE VAGUE.

Petitioners' assertion that this Court should grant review of paragraphs (a) and (k) because these provisions are unconstitutionally vague is without merit. The "vagueness" doctrine raises a different issue than whether or not a provision of an injunction is properly tailored to meet the requisite government interest. A "vagueness" challenge focuses on whether the words of the injunction are sufficiently definite to give persons of ordinary intelligence adequate notice of the proscribed conduct. (*See, Schenk, supra*, 519 U.S. at—— [117 S. Ct. at 869-870] [holding that the term "demonstrating" is not vague when

---

[4] In their statement of the case, Petitioners misrepresent that the California Supreme Court upheld paragraph (a) on the ground that "there is no right to associate with fellow gang members. . . ." (Petition, pp. 11-12.) The rationale of the California Supreme Court was substantially more limited, concluding only that *within Rocksprings* the VSL/VST criminal street gang members did not have a constitutionally protected right to association in public view. (Petitioners' App. 18-22.) In reaching this conclusion, the California Supreme Court succinctly stated:

> Freedom of association, in the sense protected by the First Amendment, "does not extend to joining with others for the purpose of depriving third parties of their lawful rights."

(Petitioners' App. 21, *quoting Madsen, supra*, 512 U.S. at 776.)

the injunction is read as a whole]; *also see, Roth v. United States,* 354 U.S. 476, 491 (1957).) In evaluating "vagueness" challenges this Court has said that "[t]he particular context is all important." (*American Communications Asso. v. Douds,* 339 U.S. 382, 412 (1950).)

A. Paragraph (a) Gives Adequate Notice.

Petitioners assert that the prohibition in paragraph (a) against gathering "with any other known 'VST' . . . or 'VSL' member" is unconstitutionally vague because it is unclear who has to "know." (*See,* Petition, pp. 20-21.) However, as the California Supreme Court properly concluded in response to this very same argument, Respondent must establish the defendant's own knowledge of his associate's gang membership to meet its burden of proving conduct in violation of this provision of the preliminary injunction. (Petitioners' App. 30.) Moreover, in upholding the provision, the California Supreme Court stated:

> . . . we think the element of knowledge is fairly implied in the decree. To the extent that it might not be, we are confident that the trial court will . . . impose such a limiting construction on paragraph (a) by inserting a knowledge requirement should an attempt be made to enforce that paragraph of the injunction. With this minor emendation, the text of provision (a) passes scrutiny under the vagueness doctrine.

(Petitioners' App. 30.) Throughout these appellate proceedings, Respondent has taken the position on this issue adopted by the California Supreme Court. (*See,* Respondent's Brief in the Court of Appeal, p. 73; Letter-Brief of Respondent to the Court of Appeal, p. 3, n.1; Petition for Review to the California Supreme Court, p. 12, n.3; Respondent's Opening Brief on the Merits to the California Supreme Court, p. 35, n.21; Respondent's Reply Brief on the Merits to the California Supreme Court, p. 23.)

Even as correctly interpreted, Petitioners assert paragraph (a) is unconstitutionally vague because it invites arbitrary enforcement. (Petition, p. 21.) This argument is based on the assertion that paragraph (a) empowers police officers to arrest a defendant if the officer "thinks" or "believes" the defendant is in Rocksprings with an individual the defendant knows to be a VSL/VST criminal street gang member. (*Ibid.*) However, paragraph (a) is no different than the multitude of other prohibitory statutes and injunctions containing an "intent" element. Moreover, paragraph (a) does not alter the basic requirement that a police officer needs "probable cause," not a mere "belief," to make an arrest for violation of a statute or injunction. Thus, a police officer must have "probable cause" to believe that a defendant "knows" that the other individual is a gang member in order to make an arrest for a violation of paragraph (a).

Petitioners' reliance on *Kolender v. Lawson,* 461 U.S. 352 (1983) is misplaced. In *Kolender,* this Court held that a criminal statute requiring persons who loiter to provide "credible and reliable" identification when requested by a police officer was unconstitutionally vague. This conclusion was based on the fact that the statute failed to set forth with sufficient particularity what a suspect must do in order to satisfy this requirement, leaving individual police officers on the beat to decide whether the identification presented was "credible and reliable." (*Id.* at 360-361.) Thus, in *Kolender* it was unclear what a police officer needed probable cause of before making an arrest. On the other hand, it is clear under paragraph (a) that a police officer needs probable cause to believe defendant has the requisite knowledge before making an arrest for a violation of this provision. Petitioners' paragraph (a) vagueness challenge is, therefore, without merit.

B. Paragraph (k) Gives Adequate Notice.

Petitioners assert that the terms "confronting," "intimidating" and "annoying" in paragraph (k) are unconstitutionally vague based upon this Court's decision in *Coates, supra,* 402 U.S. 611.[5] (*See*, Petition pp. 22-23.) In *Coates,* this Court struck an ordinance, in part, on the ground that the use of the word "annoying" was vague because "no standard of conduct is specified at all." (402 U.S. at 614.)

Unlike *Coates*, the preliminary injunction at issue here clearly sets forth standards of conduct for the terms "confronting," "intimidating" and "annoying" when these words are considered in context. (*See*, Petitioners' App. 31-32.) In response to this same argument, the California Supreme Court correctly stated:

> . . . the declarations filed by the City in support of preliminary relief leave little doubt as to what kind of conduct the decree seeks to enjoin. One Rocksprings resident recounted an incident in which gang members had threatened to cut out the tongue of her nine-year-old daughter if she talked to the police; she stated that other residents had been threatened as well. Another resident reported her neighbor's property had been vandalized and the resident threatened after complaining to police that gang members had urinated in her garage. A police officer declared Rocksprings residents had told him gang members confront and threaten them with physical violence when asked to leave residential property. Others refused to furnish declarations, fearing for their lives if any gang member should discover their identities.

---

[5] The discussion with respect to the "knowledge" requirement of provision (a) is also applicable to paragraph (k). As with paragraph (a), Respondent has throughout these proceedings conceded that defendants had to have the "knowledge." (*See*, Petition for Review to the California Supreme Court, p. 20, n.65; Respondent's Opening Brief on the Merits to the California Supreme Court, p. 47, n.24.)

(*Ibid.*) Indeed, words such as those challenged by Petitioners are commonly used in injunctions. (*See, e.g., Madsen, supra,* 512 U.S. at 760-761, 775 [upholding against a vagueness challenge an injunction prohibiting "intimidating, harassing, touching, pushing, shoving, crowding, or assaulting persons entering or leaving' "], *Allred v. Shawley,* 232 Cal.App.3d 1489 (1991) [upholding an injunction that, in part, enjoined abortion protesters from entering a parking area to "[p]hysically approach, confront, walk nearby, or follow . . ."], California Code of Civil Procedure § 527.6 [authorizing an injunction prohibiting harassment and defining harassment as conduct that "alarms, annoys, or harasses the person. . . ."].) Accordingly, Petitioners' paragraph (k) vagueness challenge is without merit.

III. AN INJUNCTION CAN BIND THE MEMBERS OF AN ORGANIZATION CAUSING A PUBLIC NUISANCE.

Notwithstanding Petitioners' assertions to the contrary, it is a common and well-established practice for courts to issue injunctions regulating conduct that are binding upon persons based on "association" with an organization, even one exercising First Amendment rights. Without question, an injunction can run to classes of persons through whom the enjoined organization may act, such as agents, servants, employees, aiders, and abettors, even though they are not parties to the action. (*See, e.g., Regal Knitwear Co. v. National Labor Relations Board,* 324 U.S. 9, 13-16 (1944), *In re Lennon,* 166 U.S. 548, 554 (1897), *Berger v. Superior Court,* 175 Cal. 719, 721 (1917).) For example, in *Madsen* this Court upheld certain provisions of an injunction directed at:

> Operation Rescue, Operation Rescue America, Operation Goliath, their officers, agents, *members,* employees and servants . . . and all persons acting in concert or participation with them, or on their behalf.

(Emphasis added.) (512 U.S. at 759, fn. 1; *also see, Schenk, supra,* 519 U.S. at —— [117 S. Ct. at 859, 862, n.3] [upholding a portion of an injunction against defendants Operation Rescue, Project Rescue Western New York, and Project Life of Rochester, and "the officers, directors, agents, and representatives of defendants, and all other persons whomsoever, known or unknown, acting in their behalf or in concert with them, and receiving actual or constructive notice of this Order . . ."], *Milk Wagon Drivers Union, supra,* 312 U.S. 287 [injunction prohibiting a labor union from engaging in any picketing where peaceful picketing was enmeshed with violent conduct must necessarily have bound the union members].)

As the California Supreme Court suggested, although the issue was not directly before them, and Petitioners assume to be true, Respondent could have obtained a preliminary injunction against the VSL/VST criminal street gangs as organizations. (Petitioners' App. 42-43; Petition, p. 25.) Had Respondent done so, the preliminary injunction unquestionably could have been worded to bind the defendant VSL/VST criminal street gang members, including Petitioners. This would have been true even if the defendants were not named as parties in the abatement action, so long as they had notice of the preliminary injunction.

It would be an absurd result to conclude that Respondent could have obtained an injunction binding these gang members by naming the VSL/VST criminal street gangs as defendants but can not do so by specifically naming the individual gang members. (*See,* Petitioners' App. 42-43.) This is especially true given that, by proceeding in the manner in which it did, Respondent provided greater due process than necessary by naming each of the persons to be subject to the injunction as a defendant, serving each of the with the lawsuit, and giving each of them the opportunity to appear in court to challenge the allegations of the lawsuit.

Petitioners' assertion that members of an organization creating a public nusiance can be bound by an injunction only based upon evidence demonstrating they had a specific intent to accomplish the public nuisance is illogical. (Petition, pp. 25-29.) If Petitioners' assertion were correct, an injunction issued against organizations, such as those at issue in *Madsen,* would be ineffective. Organizations can, of course, only act through their members.

Moreover, none of the cases cited by Petitioners stands for the proposition that members of an organization creating a public nuisance can not be bound by an injunction abating the nuisance. This is not a case were Respondent seeks to impose monetary damages on the defendants. (*See, NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982) [holding that individual members of the NAACP could not be held *liable* for business losses suffered by plaintiff merchants over the seven-year duration of a civil rights boycott during which only sporadic violence occurred].) Nor is this a case where Respondent seeks to impose criminal sanctions based upon Petitioners' membership in the gangs.[6] (*See, Scales v. United States,* 367 U.S. 203 (1961) [reversing a conviction under a statute that made it a felony for a person to be a member of the Communist Party], *Mitchell v. Prunty*, 107 F.3d 1337 (9th Cir. 1997), *amended on denial of rehearing* —— F.3d ——, [stating that the defendant could not be convicted of murder merely based on association with gang absent evidence of aiding and abetting in the murder].) Nor is this a case where Respondent seeks to withhold recognition of a political organization. (*See, Healy v. James,* 408 U.S. 169 (1972) [state college improperly withheld recognition to Students for a Democratic Society because of its affiliation with a national organization involved in sporadic disruptive and violent campus activity].) Furthermore, unlike the organizations at issue in *Claiborne Hard-*

[6] For this reason, Petitioners' "Jaycees" hypothetical is also inopposite. (Petition, p. 28.)

ware, Scales and *Healy*, the record in this case does not demonstrate that the VSL/VST criminal street gangs engaged in any protected First Amendment activities within Rocksprings.

CONCLUSION

For the above reasons, Respondent respectfully requests this Court to deny the petition for writ of certiorari.

Respectfully submitted,

JOAN R. GALLO
(Counsel of Record)
GEORGE RIOS
GLENN D. SCHWARZBACH
151 West Mission Street
San Jose, California 95110
(408) 277-4454
Attorneys for Respondent